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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,740	12/27/2001	Bradley J. Enegren	PF00434 US	1376
23608	7590	12/15/2004	EXAMINER	
MEDTRONIC MINIMED INC. 18000 DEVONSHIRE STREET NORTHRIDGE, CA 91325-1219			NASSER, ROBERT L	
			ART UNIT	PAPER NUMBER

3736

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/034,740

Applicant(s)

ENEGREN ET AL.

Examiner

Robert L. Nasser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 21-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/21/2004 has been entered.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 6-8, 21, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Savage et al 5830209. Savage et al shows an implantable sensor system for taking readings from a patient including implantable sensors 52 and 54 at the distal tip of element 34, where the tip contacts bodily fluids, a flush sleeve 22 for directing flushing fluid to the tip (see column 7, lines 6-19) where the sensor and the flush sleeve are concentric. With respect to claim 2, there is a connector fitting 16 which helps support the sensors in the body. With respect to claim 4, the outer sleeve 2 and the sensor are in a "tight" fit arrangement. With respect to claim 6, the sleeve 22 is proximal to the sensor. With respect to claim 7, there is a protective sleeve 14. With respect to claim 8, it is inherent that there is a connector fitting for connecting the fiber 34 to the source/detector of the light. Claims 21 and 2 are rejected for the reasons given above.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Savage et al in view of Odell et al 2003/012025. Odell further teaches a known method for delivering a flushing solution is to pierce a septum with a needle to deliver the fluid. (see paragraph 27). Hence, it would have been obvious to modify Savage et al to deliver the fluid through a septum, to protect the lumen and prevent contamination.

Claims 5 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Savage et al in view of Masterson et al 5891094. In figures 18 and 19 and the accompanying discussion, Masterson et al further shows a one way valve in the flush line to prevent back wash of the flushing solution. Hence, it would have been obvious to modify Savage to use such a one way valve, to ensure proper flushing operation.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Savage et al in view of Newman et al 6358244. Newman et al et al teaches that saline is a known flush solution (see column 5, lines 47-65). Hence, it would have been obvious to modify Savage to use heparin, as it is merely the substitution of one known equivalent fluid for another.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Savage et al in view of Riccitelli et al 5166990. Riccitelli et al teaches that heparin is a known flush solution (see column 2, lines 39-64). Hence, it would have been obvious to modify

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Savage to use heparin, as it is merely the substitution of one known equivalent fluid for another.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Savage et al in view of Wulfman et al 2002/0007190. Wulfman further teaches the equivalence of wireless or wired connection between implanted temperature sensors and the monitor (see paragraph 145). Hence, it would have been obvious to modify Savage to use a wireless connection, as it is merely the substitution of one known equivalent transmission means for another.

Applicant's arguments filed 9/21/2004 have been fully considered but they are deemed moot in view of the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (571) 272-4731. The examiner can normally be reached on Mon-Fri, variable hours.

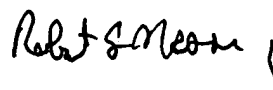
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert L. Nasser  
Primary Examiner  
Art Unit 3736

RLN  
December 13, 2004



ROBERT L. NASSER  
PRIMARY EXAMINER